THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.17114 of 1995

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondent Nos.2 and 3 in recovering the amount from petitioner's pension as arbitrary, illegal, without jurisdiction and consequently direct the respondents to pay the pension to the petitioner as per the proceedings dated 25.2.1994.

It is the case of the petitioner that he is an Ex-Serviceman retired from Indian Army on 11.9.1967 as a Subedar JC-30940, Junior Non-Commissioned Officer. After discharge from the Army, he did not get any employment either in the Central Government or State Government Departments, but however, he was employed as Watchman in the State Bank of India, Ramachandrapuram branch, East Godavari district and worked there from 22.4.1980 to 24.8.1986 on temporary basis and again as Watchman-cum-Messenger in the State Bank of India, Samalkot branch, East Godavari district from 25.8.1986 to 21.7.1987 on temporary basis. He has put up seven years of service in the State Bank of India as daily wage employee and he did not complete 10 years of service, therefore, he does not fall under the category of re-employed. Further, the entire service in the State Bank of India is only on daily wage basis and he is not entitled for any pensionary benefits, as the Bank is a public sector undertaking and not a Governmental organisation. Further, he is entitled to receive a sum of Rs.2,203/- towards pension and he was drawing the same till June 1994. In the month of June, 1994, a team of Auditors from second respondent visited the office of third respondent and said to have found that the petitioner was over paid his pension for which he was not eligible for One Time Increase (OTI) as the petitioner is re-

employed in the State Bank of India from 23.4.1980 to 24.8.1986 at Ramachandrapuram branch and again from 25.8.1986 to 21.7.1987 at Samalkota branch. One time increase pension has been granted to the Armed Forces Pensioners, which is not available for those who have completed 10 years of service in the re-employment category. According to the petitioner, he worked for only 7½ years that too only on daily wage basis in a non-Governmental organisation, therefore, he is entitled for OTI benefit.

A detailed counter affidavit has been filed on behalf of respondents 1 to 3, wherein it was categorically admitted that the petitioner is entitled for payment of proportionate rate of one time increase in pension with effect from 1.1.1992 as per para 2.8 of Ministry of Defence, New Delhi letter No.1(3)93/D(Pensions/Services) dated 25.2.1994. There will be no change in the rule position even if the service on re-employment was rendered in casual, daily wage or part time capacity. The audit was conducted in the State Bank of India, Eluru during July 1994 and in fact, the revised orders on one time increase were not received in Andhra area by the concerned Banks till the end of June 1994. Thus, neither the bankers nor the staff of Audit party were aware of the implications and interpretation of the revised Government Letter dated 25.2.1994 authorising payment of one time increase at proportionate rate of OTI to re-employed pensioners who have rendered less than 10 years of service as contained in para 2.8 of the aforesaid Government Orders. As per the revised orders dated 25.2.1994, such of the re-employed pensioners who were re-employed for less than 10 years of service were required to apply afresh to the Pension Disbursing Agencies (in this case, State Bank of India, Bazar branch, Eluru) along with certificate from the re-employer for assessing the quantum of proportionate OTI. The petitioner does not appear to

have approached the Pension Disbursing Agency with the relevant particulars. Hence the PDA could not authorize correct rate of OTI or adjust the over-payment already made on this account.

From the above, it is clear that there was some communication gap between the Audit party and the Governmental authorities. Therefore, the impugned order is liable to be set aside.

In the result, the writ petition is allowed and the impugned order dated 2.9.1994 is set aside. The respondents are directed to consider the One Time Increase for the purpose of enhancement of petitioner's pension, as per law, treating the very writ petition as a representation of the petitioner and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

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C.V.RAMULU, J

Date: 26.9.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.17114 of 1995

26.9.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.17114 of 1995

Date: 26th September, 2006

Between:

Y.Mallaiah

.. Petitioner

And

Union of India, rep. by its
Secretary, Ministry of Defence,
New Delhi & others.

.. Respondents